

CORONAVIRUS INFORMATION & UPDATES

April 6, 2020

Illinois's Expansion of Access to Health Care via Telehealth Executive Order 2020-09 & Medicaid Emergency Rulemaking

On March 19, 2020, Governor Pritzker issued [Executive Order 2020-09](#) (the “[Executive Order](#)”), expanding access to health care services for all Illinois residents provided through remote means during the term of the COVID-19 [Gubernatorial Disaster Proclamation](#), which declares a state of disaster in Illinois. The Executive Order expands the technologies that may be used to deliver telehealth services and creates a coverage requirement for all medically necessary services delivered through telehealth. The Executive Order is followed by the recent [CARES Act](#), which expands access to telehealth for Medicare beneficiaries, and the filing of an [1135 Waiver under the Social Security Act](#) by the Illinois Department of Health and Family Services (“[IDHS](#)”) to expand its already broad Medicaid coverage of telehealth services.

Attorneys
[Deborah L. Gersh](#)
[Alison Fethke](#)
[Ryan B. Marcus](#)
[John Saran](#)
[Elana Bengualid Harary](#)

1. What Changes Were Made to the Definition of Telehealth Services?¹

The Executive Order makes clear that the definition of telehealth services is inclusive of all health care services, including mental health treatment, substance use disorder treatment, and related services, and that telehealth services may be provided without regard to a patient’s location. The Illinois Department of Financial and Professional Regulation also [clarified](#) that out-of-state practitioners with established Illinois patients may provide telehealth services to such patients. The Executive Order further allows telehealth services to be provided via a wide range of available technologies, such as Apple’s FaceTime, Facebook Messenger video chat, Google Hangouts, and Skype, as well as videoconferencing and telephone calls.² These definitional changes are consistent with the [guidance](#) issued by U.S. Department of Health and Human Services, Office for Civil Rights, on March 17, 2020, which temporarily waives enforcement for use of non-HIPAA-compliant telehealth technologies. The Executive Order encourages providers to enable available encryption and privacy modes and notify patients of the potential privacy risks to the extent feasible. In light of Illinois’s extensive privacy protections afforded to patients, we recommend that providers notify patients of the applicable privacy risks prior to using the aforementioned platforms to provide services.

2. What Telehealth Services Are Required to Be Covered by Payors?

Currently, Illinois does not explicitly require that commercial health insurance plans cover telehealth services. The Executive Order temporarily changes that by requiring all health insurance plans regulated by the Department of Insurance, such as commercial HMOs and PPOs, to cover the costs of all telehealth services for clinically appropriate, medically necessary covered services and treatments. Commercial health plans also cannot exclude claims for telehealth services from providers that are contracted as in-network, but are not currently authorized by the health plan to provide

¹ The Illinois Insurance Code currently defines telehealth services broadly to include the “the delivery of health care services by way of an interactive communication system,” which means an “audio and video system permitting two-way, live interactive communication between the patient and the distant site health care provider.” 225 ILCS 5/356z.22.

² Per the Executive Order, Facebook Live, Twitch, TikTok and similar video communication applications should not be used in the provision of telehealth services due to privacy concerns with such public-facing applications.

CORONAVIRUS INFORMATION & UPDATES

telehealth services.³ Unfortunately, the Illinois Department of Insurance Executive Order bulletin issued on March 25, 2020 does not create parity for telehealth services. As such, while telehealth services are reimbursable, they may not be reimbursed at the same rate as services provided in-person.

3. Does a Patient Need Prior Authorization Before Receiving Telehealth Services?

No. The Executive Order specifically prohibits commercial health plans from imposing any prior authorization requirements for in-network telehealth services provided in relation to COVID-19.

4. May a Payor Impose Limitations on Telehealth Services?

No. The Executive Order specifically prohibits commercial health plans from imposing utilization review requirements on telehealth services that are in any way unnecessary, duplicative, or unwarranted. Commercial health plans also cannot impose any treatment limitations on services provided via telehealth that are more stringent than those imposed on services provided in-person. Commercial health plans may still impose reasonable requirements and parameters on telehealth services, such as those relating to documentation and recordkeeping by the providers, but cannot be more restrictive than those contained in IDHS's emergency rulemaking.⁴

5. Are Deductibles or Cost-Sharing Requirements on Telehealth Services Permitted Under the Executive Order?

No. The Executive Order specifically prohibits commercial plans from imposing cost-sharing obligations for telehealth services provided by in-network providers. Specifically, deductibles do not apply to any testing, treatment, and vaccinations for COVID-19, but may apply for other services.

6. Are There Any Different Rules that Apply to the Illinois Mental Health and Developmental Disabilities Confidentiality Act (the "Act")?

To ensure treatment for all mental health disorders and developmental disabilities, the Executive Order specifically allows any behavioral health provider that is covered under HIPAA to use any form of non-public facing remote communication product while the Gubernatorial Disaster Proclamation is in effect, regardless of whether the service concerns the diagnosis or treatment of COVID-19 or related conditions. The Executive Order also waives the Act's consent-to-disclose requirements such that patients' protected records and communications may be disclosed to those persons not specifically authorized by the statute without the patient's written consent. These waivers are intended to protect providers from inadvertently violating the Act while providing telehealth services during the term of the COVID-19 Gubernatorial Disaster Proclamation.

³ Telehealth services subject to the Executive Order may be provided by physicians, physician assistants, optometrists, advance practiced registered nurses, clinical psychologists, prescribing psychologists, dentists, occupational therapists, pharmacists, physical therapists, clinical social workers, speech-language pathologists, audiologists, hearing instrument dispensers, other mental health providers, and other substance use disorder treatment providers, as long as they are licensed, registered, certified, or authorized to practice in Illinois.

⁴ At 89 Ill. Admin. Code 140.403(e).

CORONAVIRUS INFORMATION & UPDATES

7. Has Medicaid Coverage and Reimbursement for Telehealth Services Changed?

Yes. IDHS announced a telehealth services expansion on March 20, 2020, effective for services provided on or after March 9, 2020 until the end of the COVID-19 public health emergency. In order to expand reimbursement, IDHS implemented the following changes through emergency rulemaking:

- a. **Sites.** “Distant sites” are now defined to include any Medicaid provider with the appropriate license or certification to offer the service provided, and “originating sites” now include any site that allows for a patient to use a valid means of telehealth service delivery.⁵ This means that a hospital can serve as a distant site, and a patient can now participate in a reimbursable telehealth visit from home.
- b. **Virtual Check-ins.** A “virtual check-in” is an interaction between a provider and an existing patient conducted over synchronous, two-way audio technology. Ordinarily not considered a reimbursable form of telehealth services, physicians, advance practice registered nurses, and physician assistants who can provide evaluation and management services may now render services as “virtual check-ins,” subject to certain limitations. FQHCs, rural health clinics, and encounter rate clinics may also receive reimbursement for virtual check-in services.
- c. **E-Visits.** An “e-visit” is a non-face-to-face, patient-initiated communication using an online patient portal. E-visits can be billed only when the provider has an established relationship with the patient, and the patient must verbally consent to receive such services. IDHS’s emergency rulemaking allows FQHCs and rural health clinics to bill for e-visits, which they are unable to do under Medicare rules.
- d. **Behavioral Health Services Expansion.** With the exception of mobile crisis response and crisis stabilization services, IDHS will reimburse for all behavioral health services, including substance use disorder and mental health disorder services, provided using audio-only telephone interactions.
- e. **Reimbursement.** Reimbursement for telehealth services will be made at the same rate paid for face-to-face services. E-visits, virtual check-ins, and details on originating site fees are paid pursuant to an IDHS fee schedule, which is detailed in the Medicaid telehealth [billing instructions](#) released on March 30, 2020. IDHS also released additional [FAQs](#) to guide providers on seeking reimbursement for telehealth services provided to Medicaid beneficiaries while the emergency rule is in place.

⁵ A valid means of delivery includes an interactive telecommunication system, or any other communication system where information is exchanged over a synchronous interaction that would meet the key components and requirements of the same service when provided via a face-to-face interaction. This broad definition accommodates the Executive Order’s expansion of the types of technologies that may be used to deliver telehealth services.